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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,380	04/30/2004	Bill R. Hall	39236.0100	3379
20322 7590 08/09/2007 SNELL & WILMER L.L.P. (Main) 400 EAST VAN BUREN ONE ARIZONA CENTER PHOENIX, AZ 85004-2202			EXAMINER LAUX, JESSICA L	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 08/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/709,380	HALL ET AL.	
	Examiner	Art Unit	
	Jessica Laux	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/30/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-4, 6-7 are rejected under 35 U.S.C. 102(a) as being anticipated by Jensen (6457283).

Regarding claim 1: Jensen discloses a bird repellant device comprising:

a base member (12) having a plurality of pairs of oppositely disposed notches (see drawing below) and a slot (16) positioned between each of said pairs of notches; and

a plurality of spike members (32,36) each forming oppositely disposed prongs and an arc (34) between said prongs wherein each of said arcs is inserted through one of said slots and said prongs are positioned in said pairs of notches (figures 3 and 4).

Regarding claim 3: The bird repellant device of claim 1 wherein said pair of oppositely disposed prongs extend from said arc at an angle (figure 3).

Regarding claim 4: The bird repellant device of claim 1 wherein said pair of oppositely disposed prongs extend from said arc at an angle (figures 3, 4, where they extend at generally 90 degrees).

Regarding claim 6: The bird repellant device of claim 1 wherein said pairs of oppositely disposed prongs extend from their arcs at varying angles (Col. 4, lines 38-41 and 47-49).

Regarding claim 7: The bird repellant apparatus of claim 1 wherein said base further comprises a plurality of circular apertures (14) therethrough.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8-11, 13-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (6457283) in view of Riddell (20030208967).

Regarding claim 2: Jensen discloses the bird repellant device of claim 1, but does not disclose further comprising a plurality of second spike members wherein each spike member is perpendicularly attached to a top of said base member.

Riddell discloses a bird deterrent device having a base and slots and at spike members at an angle and further includes at least one second spike member (12B) that extends perpendicular to the base.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Jensen to have a second perpendicular spike as disclosed by Riddell for the purpose of providing more spikes to better deter birds.

Regarding claim 8: Jensen discloses a bird deterrent apparatus comprising:
a base (12) having a plurality of slots (16) therein;
at least one primary spike member (30) bent to form first and second prongs (32,36) and an arc (34) between said prongs for inserting through one of said slots

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(figure 4). Jensen does not disclose at least one second spike member perpendicularly attached to a top surface of said base.

Riddell discloses a bird deterrent device having a base and slots and at spike members at an angle and further includes at least one second spike member (12B) that extends perpendicular to the base.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Jensen to have a second perpendicular spike as disclosed by Riddell for the purpose of providing more spikes to better deter birds.

Regarding claim 9: The bird repellent device of claim 1 wherein said first and second prongs extend from said arc at an angle (Jensen - figure 3).

Regarding claim 10: The bird deterrent apparatus of claim 8 wherein said first and secondary prongs extend from opposite sides of said base or the same side of said base (Jensen – figures 3-4).

Regarding claim 11: Jensen discloses the bird deterrent apparatus of claim 8, but does not expressly state that said first spike member comprises stainless steel or other metals which may be powder coated or painted. However Jensen does disclose that the spike members are wire (Jensen - Col. 4, lines 27-31) and it is common and well known for wire to be made of stainless steel or other metals.

Regarding claim 13: The bird repellent device of claim 10 wherein said pairs of oppositely disposed prongs extend from their arcs at varying angles (Jensen - Col. 4, lines 38-41 and 47-49).

Regarding claim 14: The bird repellant apparatus of claim 8 wherein said base further comprises a plurality of apertures (Jensen - 14) therethrough.

Claims 5, 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jenson (6457283) in view of Riddell (20030208967) and further in view of Donoho (20050160685).

Regarding claims 5, 12: Jenson in view of Riddell disclose the bird deterrent device of claims 2 and 8, but does not disclose that the plurality of second spike members comprise a polycarbonate or other polymers. However it is common and well known to use a polycarbonate or other polymers for the second spike member (where Donoho discloses that it is known to have spike members made of polycarbonate). Therefore it would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made modify the spikes to be of polycarbonate material (is it may be more cost effective or easier to obtain) and further it appears that either material would perform the same function of deterring birds equally well considering the design and function.

Claims 15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenson (6457283).

Regarding claims 15 and 17: The claim limitations merely recite the obvious method steps of "providing", "forming" and "inserting" the various components of the device disclosed by Jensen (as presented above) and therefore does not patentably distinguish over the prior art.

Regarding claim 1: The claim limitations merely recite the obvious method steps of “providing” the various components of the device disclosed by Jensen in view of Riddell (as presented above) and therefore does not patentably distinguish over the prior art.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL

JL
08/06/2007


Jeanette Chapman
Primary Examiner